

1 moment. And this appears to be the written warning
2 form dated April 20, 2006, involving David Davis; is
3 that correct?

4 A. That's correct.

5 Q. And you'll see there that it -- in the
6 first section when talking about the details of the
7 Merit System violation, it refers to a violation
8 concerning the April 17, 2006 conversation on the
9 telephone that Davis had with the mayor regarding
10 city proposals. You see where it says that?

11 A. That's correct.

12 Q. And I know what it says elsewhere on the
13 form. But that event, that telephone conversation
14 you viewed as violating the chain of command,
15 violating the Merit System rules and regulations for
16 which he was terminated; is that accurate?

17 A. No. He wasn't terminated for that. He was
18 written up for that. He was written up for that
19 action. What got him terminated was the amount of
20 Group II offenses that he had in his file. Which if
21 you go down to August -- if you'll go down to the
22 third paragraph right there on the same page, that
23 one thing got -- warranted a write-up. That one
24 thing didn't get him terminated.

25 Q. Well, let's look at the bottom of the form

1 where it says, quote, discharge as per Merit System
2 rules and regulations for second Group II offense.

3 A. Yes, sir.

4 Q. What was the second Group II offense?

5 A. The one that he had just done.

6 Q. I'm sorry?

7 A. The first one -- you want to know what the
8 first one was?

9 Q. No. I don't want to know what the first
10 one was.

11 A. Okay. Well, the second one --

12 Q. If you would just listen to my question.
13 Let me rephrase it. It's real simple. It says,
14 quote, discharge as per Merit System rules and
15 regulations for second Group II offense, end quote.
16 You see where it says that?

17 A. Yes, sir.

18 Q. Okay. What, specifically, was the second
19 Group II offense?

20 A. Contacting the mayor.

21 Q. Okay. Good enough. And then it says
22 discharged -- and I quote it again -- discharged as
23 per Merit System rules and regulations for first
24 Group III offense, pages 53 and 54, end quote. What
25 specifically was the first Group III offense for

1 which he was discharged?

2 A. Okay. Let me look at it. It was Group
3 III, line 6, insubordination by refusal to perform
4 work assigned slash to comply with written or verbal
5 instructions of the supervisory force.

6 Q. And that related to the telephone
7 conversation you had with the mayor; is that
8 correct?

9 A. And the SOPs. Merit System are written
10 instructions. Basically, I said the Merit System is
11 written instructions and standard operating
12 procedures.

13 Q. I'm afraid the record right now is not
14 clear, at least it's not clear in my mind. So I
15 want to know what the specific first Group III
16 offense was for which he was discharged. Was it the
17 communication over the telephone that he had with
18 Mayor Hardin?

19 A. No. It was his insubordination to follow
20 the rules that was written --

21 Q. Follow what rules?

22 A. -- which was not to --

23 Q. Not to --

24 A. -- the standard operating procedure or the
25 Merit System contact and direct contact with council

1 members.

2 Q. Okay. So it was, in fact, his
3 communication with the mayor that was considered by
4 you and others to be the Group III offense; is that
5 right?

6 A. It was not following the rules.

7 Q. Want me to try again?

8 A. Yes.

9 Q. I will. I'm going to keep trying until I
10 get an adequate answer, which is: The Group III
11 offense which was his first Group III offense for
12 which he was discharged, was that, in fact, his
13 telephone communication with Mayor Hardin?

14 A. That is correct. That was the violation.

15 Q. Okay. Thank you.

16 It goes on to say -- which is confusing to me
17 so you can, I think, explain it -- on the second
18 page of Exhibit 24, this written warning form goes
19 on to say, quote, this written warning is intended
20 to give you an opportunity to correct your work
21 performance and conduct in the future. And then it
22 goes on to say, any further violations could result
23 in your dismissal from employment. You see where it
24 says that?

25 A. That's a standard printout on the form.

1 Doesn't have any bearing on that because it's also
2 conditional --

3 Q. Because he's fired?

4 A. Well, it don't have any bearings on that.

5 That would be in case it is a written warning and it
6 wasn't at this point --

7 Q. Right.

8 A. --- you know.

9 Q. But obviously that warning form, if, in
10 fact, he's being discharged, doesn't have a lot of
11 bearing on Mr. Davis because he's gone.

12 A. Well, I hate that, too.

13 Q. You hate what?

14 A. I hate that he's gone, but that's --

15 Q. Would you be in favor --

16 A. --- part of the rules.

17 Q. --- of possibly reinstating him?

18 A. Would I be in favor of it?

19 Q. Yes.

20 A. No, sir.

21 Q. Why is that?

22 A. It would -- I don't think that would be a
23 good idea.

24 Q. Why?

25 A. And I think he's gone on and done pretty

1 good.

2 Q. We're going to talk about that later on.

3 A. I don't -- I don't think he would want to
4 be here, to tell the truth. And I'm going to be
5 honest with you. I don't think he want to be here.
6 Because he could have communicated with the staff or
7 myself or anyone else while he was here. He had
8 every opportunity. I don't have anything against
9 David.

10 Q. All right. Good enough.

11 A. It's the rules.

12 Q. This warning and discharge form, Exhibit
13 24, was signed apparently by Ms. Goodwin and
14 yourself; is that correct?

15 A. Which one now? 24?

16 Q. Yes.

17 A. Yes.

18 Q. It bears the date April 21, right?

19 A. And Roy Waters, who was the supervisor.
20 That's who carried this out.

21 Q. Now, was this actually handed to Mr. Davis
22 in a meeting that you participated in?

23 A. I wasn't in this one. Chief Waters took
24 care of this, along with Barbara Goodwin. I put
25 this in Chief Waters' hands, Deputy Chief Waters.

1 He signed this on the supervisor's signature. So
2 I'm trying to remember was I there when the final
3 thing happened, but Chief Waters handled this
4 portion.

5 Q. So you were not involved in the meeting
6 that evidently Mr. Davis was called in, Ms. Goodwin
7 was there, Deputy Chief Waters was there, and he was
8 handed this discharge form and actually entered his
9 comments?

10 A. I think -- he handled this, but I might
11 have been there the day -- I'm trying to make sure
12 I'm correct. I usually can remember everything
13 good, but I don't want to say anything that's
14 wrong. I might have been there, but everything was
15 taken care of and the decision was made.

16 Q. Okay. I'm not going to try and read
17 because I can't read Mr. Davis's handwriting, but
18 apparently he entered these written comments at the
19 end of this written warning form, Exhibit 24. Is
20 that your understanding?

21 A. Yes, sir. That's his writing.

22 MR. WOODLEY: Mr. Graham, if you don't
23 mind, I'm going to ask Mr. Davis to read that,
24 because --

25 MR. GRAHAM: That will be fine.

1 MR. WOODLEY: -- it's right at the bottom
2 of Exhibit 24.

3 MR. GRAHAM: No objection.

4 MR. DAVIS: In regards -- what's that say?
5 In regards to contacting the mayor, I was
6 acting in my capacity as president of the
7 Phenix City Firefighters' Association Local
8 3668 and not as a driver/engineer with the City
9 of Phenix City. I will seek a review board
10 hearing.

11 Q. And, Chief Hunter, is that your
12 understanding that those were the written comments
13 that Mr. Davis entered in this warning and discharge
14 form?

15 A. That's correct, and it was put before the
16 review board.

17 Q. And, again, you don't have any information
18 that would indicate that the written statement
19 Mr. Davis had at the bottom of this form was
20 untruthful or incorrect in any way, do you?

21 A. Yes. I feel like -- I don't have any
22 information, but --

23 Q. I don't want your feelings.

24 A. Okay.

25 Q. I just want to know if you have facts --

1 A. I don't have any facts on it.

2 Q. -- that would indicate that statement by
3 him was untrue. You don't have any facts, do you?

4 A. I don't have any facts whether it's true or
5 untrue.

6 Q. Okay. If you could move on to Exhibit 25.
7 And this appears to be an End of Employment form of
8 the City of Phenix City concerning Mr. Davis
9 indicating that his employment ended on April 21,
10 2006. And then you see where the box is checked or
11 the line is checked indicating he was dismissed. Do
12 you see that?

13 A. Yes, sir.

14 Q. And then again -- and I don't want to
15 burden the record, but it refers to the Group II
16 offense and the Group III offense. You see where it
17 indicates that?

18 A. Correct.

19 Q. And those two particular offenses, as you
20 indicated earlier in your testimony, related to his
21 telephone communication with Mayor Hardin; is that
22 correct?

23 A. Phone call was violation of the Merit
24 System and the standard operating procedures.

25 Q. So is the answer to my question yes, that

1 the particular Group II offense, the particular
2 Group III offense that caused his dismissal was that
3 telephone conversation with the mayor?

4 A. That relates to the violation of the SOPs
5 and Merit System.

6 Q. So the answer is yes, and then you added to
7 it?

8 A. That's correct.

9 Q. Okay. I note that the city manager did not
10 sign this End of Employment form for Mr. Davis. Do
11 you know why that was?

12 A. I have -- I have no idea.

13 Q. But you signed it as the department head,
14 correct?

15 A. That's correct.

16 Q. And Ms. Goodwin signed it as well; is that
17 correct?

18 A. That's correct. Yes, sir.

19 Q. Do you know if this was handed to
20 Mr. Davis?

21 A. I'm not for sure.

22 Q. Because you can't remember if you were
23 involved in the meeting at the time, right?

24 A. I'm quite sure I might have been there, but
25 I don't know what paperwork was -- when the

1 finalized paperwork was there.

2 Q. If you move on to Exhibit 25, there's
3 another form. This is called Notice of Termination
4 that apparently was being sent to the Alabama Fire
5 College and Personnel Standards Commission.

6 A. You said 25?

7 Q. It's actually -- I'm sorry. It's 26.

8 A. Okay. 26, yes. Yes, sir.

9 Q. Are you familiar with this form?

10 A. Yes, sir.

11 Q. Is this a normal form that's sent out to
12 the Alabama Fire College when someone leaves the
13 fire department?

14 A. That's correct. You have to notify the
15 Fire College.

16 Q. Is that your signature at the bottom?

17 A. That's correct.

18 Q. And is that the date that you signed it?
19 April 28, 2006?

20 A. That's correct.

21 Q. Now, I'm a little bit confused because it
22 says the date of termination is April 19, 2006,
23 where the other documents say the date of
24 termination was April 21, 2006. Do you know why
25 there's a discrepancy there?

1 A. Training had to get the paperwork together
2 for this to be signed. This come out of our
3 training department, is sent to the Fire College.
4 You have ten days, something like ten days or so.
5 And that's what happened with this. There was the
6 delay in this as far as notification.

7 Q. Well, I'm not talking about the delay. I'm
8 asking you really why there were two different
9 dates. This one says he was terminated on April 19,
10 2006 that you signed. And the other documents
11 indicate that he was terminated and his employment
12 ended on April 21. So there's a two-day difference
13 there, and I was asking you if you could explain why
14 there's a discrepancy on those two dates.

15 A. Okay. Basically, that would be a error.

16 Q. Which one is an error? Was he, in fact,
17 terminated on April 19 or was he terminated on
18 April 21?

19 A. Let me get the date here what he was
20 terminated on. The last -- terminated on the date
21 that Ms. Goodwin has here. The employment date was
22 on the 21st here.

23 MR. GRAHAM: Look at this one. This is --

24 A. Yes. That's the one I'm looking at. April
25 21st. That was a typo oversight.

1 Q. What, in fact, was the termination date; do
2 you know?

3 A. 21st.

4 Q. The 21st of April?

5 A. Yes. Personnel would know better than I
6 know, and Ms. Goodwin is on here, so that's what it
7 was --

8 Q. Did Ms. Goodwin agree that Mr. Davis should
9 be terminated?

10 A. You would have to ask her that, yes. But
11 she wouldn't have signed it if she didn't.

12 Q. Did City Manager Roberts agree that
13 Mr. Davis should be terminated?

14 A. You're going to have to ask Mr. Roberts
15 that.

16 Q. But what's your understanding?

17 A. My understanding is he didn't tell me not
18 to terminate him, so --

19 Q. And then you alluded earlier that Mr. Davis
20 requested a Personnel Review Board hearing
21 concerning his termination; is that correct?

22 A. That's correct.

23 Q. And did you attend that hearing?

24 A. Yes, sir.

25 Q. Did you give testimony at that hearing?

1 A. I believe so.

2 Q. Do you recall what the substance of your
3 testimony was at the Personnel Board hearing?

4 A. No, sir. I can't remember that. I would
5 have to see that. I would have to take a look at
6 it. I don't want to say anything wrong.

7 Q. Now, after the Personnel Board hearing was
8 over and had made its recommendation, did you have
9 any conversations with City Manager Roberts when the
10 matter was placed on his desk, about Mr. Davis?

11 A. Did I have any conversations?

12 Q. Yes. After the hearing is over and before
13 Mr. Roberts makes his determination to uphold the
14 board's decision approving the termination, did you
15 have any conversations during that short period of
16 time with Mr. Roberts?

17 A. No, not unless there was some kind of
18 apology or something. You know, I'm a department
19 head. Whenever something go wrong in the department
20 that leads to this, it's something that you're sorry
21 that you put -- that happens in your department.
22 That's mainly --

23 Q. Look at Exhibit 31, which is another
24 newspaper article. This one is out of the Columbus
25 Ledger-Enquirer which addresses the subject of

1 Mr. Davis's firing. Did you have a chance to look
2 at that newspaper article when it came out?

3 A. I might have. Can I read it?

4 Q. Oh, yes. Sure.

5 A. Yes.

6 Q. Have you finished reading that newspaper
7 article?

8 A. Yes.

9 Q. And, again, this is the article in the
10 Ledger-Enquirer that came out after Mr. Davis's
11 termination. Were you contacted by the newspaper to
12 make a comment on the subject?

13 A. Yes, sir.

14 Q. And did you?

15 A. No, sir.

16 Q. You declined comment?

17 A. Yes, sir.

18 Q. And why did you decline comment to the
19 newspaper?

20 A. It wouldn't -- I feel like it wasn't any of
21 their business. It was a personnel matter.

22 Q. It wasn't any business of the newspaper?

23 A. Not as far as a personnel matter.

24 Q. Now, did it come to your attention after
25 Mr. Davis's firing that he sought employment

1 elsewhere?

2 A. Did it come to my attention?

3 Q. Yes, sir.

4 A. You know, you hear things, but -- I knew he
5 was working for the ambulance service. I seen him
6 working.

7 Q. Were you ever contacted by a prospective
8 employer like the ambulance service concerning
9 Mr. Davis's employment here in the city?

10 A. No. David already was working for them, I
11 think.

12 Q. So you didn't receive any communications by
13 a prospective employer inquiring about what kind of
14 job he did or why he left the city fire department,
15 nothing like that at all?

16 A. People have asked me, yes. I had people
17 ask me about it, but --

18 Q. What people?

19 A. I had someone from Auburn ask me. I had
20 someone from Opelika ask me.

21 Q. What's the spelling on the last word?

22 A. Opelika.

23 Q. Let's talk about Auburn first. Who called
24 you from the Auburn Fire Department about Mr. Davis?

25 A. Basically, they been -- I didn't get a

1 call. I was at a meeting and a couple guys asked
2 me, say -- well, told me, said one of your
3 firefighters put in for a job up here. And I knew
4 right then I couldn't discuss or talk about it,
5 so --

6 Q. Who were those two guys from the Auburn
7 Fire Department?

8 A. I don't know them.

9 Q. Were they chief officers?

10 A. No, sir. I talked to Chief Langley about
11 it. Chief Langley also told me David had put in,
12 but that was the end of it.

13 Q. Is Chief Langley chief of the Auburn Fire
14 Department?

15 A. That's correct.

16 Q. Where were you?

17 A. I was at a consortium meeting. We have a
18 meeting of the different departments in the
19 surrounding area. We all meet together for training
20 purposes, and we meet the first Wednesday of each
21 month and exchange ideas, and we train our personnel
22 together.

23 Q. So Chief Langley from the Auburn Fire
24 Department asked you about David, said he put in for
25 a job and used to work in your department?

1 A. Yes, sir.

2 Q. So what did you say in response to that to
3 Chief Langley?

4 A. I said, that's good.

5 Q. Did you comment on his job performance?

6 A. I know not to comment.

7 Q. Didn't, in fact, Chief Langley ask you
8 why -- what were the circumstances concerning
9 Mr. Davis's departure from your fire department?

10 A. Not that I know of.

11 Q. He didn't ask you anything about that?
12 Just seems to me that would be a curious question
13 that a chief of the department who's got a job
14 application, knowing that he left the Phenix City
15 Fire Department, would want to know why?

16 A. People didn't know me, Chief Langley and
17 certain people. And people who work for this
18 department will tell you it's certain things that
19 when they ask me, I give you a certain look and you
20 know not to ask me anything else.

21 Q. So you didn't say anything good or bad
22 about Davis's job here?

23 A. I know not to do that. I wouldn't do that.

24 Q. Okay. What about the second fire
25 department other than Auburn?

1 A. I was at the Fire Chiefs convention in
2 February. And Chief Morgan told me David had put
3 in. And I said, that's good.

4 Q. Did that chief ask you about his job here
5 in the Phenix City Fire Department?

6 A. He asked me, he said, what kind of
7 firefighter is he? I said, you have to determine
8 that for yourself. I don't -- I don't get into
9 that.

10 Q. So your testimony is you didn't comment one
11 way or the other on this?

12 A. No, I don't do that.

13 Q. Did you have any other communications with
14 any other fire department or ambulance service about
15 Davis?

16 A. No.

Q. Those are the only two?

18 A. Those are the only two until one of the
19 guys that worked for me, Rob Schwoebel, he told me
20 that David was working for Opelika. And I said,
21 that's good.

22 Q. Bear with me just for a moment here,
23 Chief.

24 (Brief recess)

Q. Okay. We can go back on the record.

1 Chief Hunter, have you ever had occasion to
2 address the city council on fire department issues?

3 A. During budget time each year.

4 Q. Is that the only time?

5 A. That's -- or unless they ask me something.
6 If they asked something in a work session. Or, like
7 recently, we received a Golden Axe from Muscular
8 Dystrophy for raising the highest amount of money in
9 the State of Alabama, you know, things like that.

10 Q. Well done.

11 A. Yes, sir. When we do things like that,
12 that's about it.

13 Q. If you wanted to directly address the city
14 council on an issue concerning your fire department,
15 would you first have to communicate that to the city
16 manager or could you go to the council meeting and
17 say I've got this concern as a chief.

18 A. I would never do that.

19 Q. You have to go through the manager?

20 A. Yes, sir. That's as far as I'm going.

21 Q. Do you know any of the citizens who sit on
22 the Personnel Review Board?

23 A. Do I know any of them?

24 Q. Yes.

25 A. I know them by going to Personnel Review

1 Board hearings, by knowing their faces, seeing them.

2 Q. Outside of the scope of that hearing on
3 Mr. Davis before the board, did you have any
4 conversations with members of the Personnel Review
5 Board about Mr. Davis?

6 A. No, sir.

7 Q. And you are aware, I take it, Chief, that
8 there's a First Amendment to our U.S. Constitution
9 that gives all citizens the rights of free speech
10 and free association?

11 A. That's correct.

12 Q. Okay. In your view, do those rights and
13 principles apply to firefighters in your fire
14 department?

15 A. That's correct. Our Merit System gives us
16 that, too, unless it impedes the performance of our
17 men.

18 Q. Have you ever had a conversation with Mayor
19 Hardin about Davis after Davis was fired?

20 A. Not that I know of.

21 Q. Would that be outside the chain of command
22 if you talked to the mayor about a termination in
23 your department?

24 A. I usually don't talk to him too much.

25 Q. But would it be outside the chain of

1 command?

2 A. Yes, sir. I talk to the city manager.

3 Q. And you can only speak to the city manager
4 about terminations?

5 A. Well, if they are speaking about something
6 in a work session or talking, but I don't -- I don't
7 go to them. I follow -- I stick as close to the
8 rules of etiquette as I can. I couldn't get away
9 with it. I wouldn't do it.

10 MR. WOODLEY: All right. I don't have any
11 further questions. Thank you, Chief.

12 EXAMINATION

13 BY MR. GRAHAM:

14 Q. Let me just ask you one question to clarify
15 something. Now, you do recognize that a firefighter
16 has the right, under the U.S. Constitution, to free
17 speech?

18 A. That's right.

19 Q. And that free speech is allowed if you
20 follow the procedures that are set out in the ASOPs
21 and in the Merit System for the City of Phenix City?

22 A. That's correct.

23 MR. GRAHAM: That's all I have.

24 MR. WOODLEY: I don't have anything
25 further. Thanks, Chief. Appreciate you

1 coming.

2 (The deposition concluded at 12:32 p.m.)

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REPORTER'S CERTIFICATE

2

STATE OF ALABAMA

3

MONTGOMERY COUNTY

4

I, Shannon Williams, Certified Shorthand Reporter and Commissioner for the State of Alabama at Large, hereby certify that on April 4, 2007, I reported the deposition of WALLACE BURNS HUNTER, SR., who was first duly sworn or affirmed to speak the truth in the matter of the foregoing cause, and that pages 1 through 103 contain a true and accurate transcription of the examination of said witness by counsel for the parties set out herein.

13

14

I further certify that I am neither of kin nor of counsel to any of the parties to said cause, nor in any manner interested in the results thereof.

16

This 10th day of April, 2007.

17


SHANNON M. WILLIAMS, CSR
Commissioner for the
State of Alabama at Large

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MY COMMISSION EXPIRES: 1/14/2010

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